SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-958

NEWAL W. GRIFFIN

VS.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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Petitioner,

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF LOUISIANA**

The petitioner, Universal Underwriters Insurance Company, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of Louisiana rendered in these proceedings on September 24, 1973.

OPINIONS BELOW

The petition for certiorari in this case arises out of the defendant's in limine exception of res judicata to the plaintiff's suit for a workmen's compensation benefits under the Louisiana Workmen's Compensation Act, LSA-R.S. 23:1021 Et Seq. The unreported opinion of the 23rd Judicial District

Court for the Parish of Ascension rendered on December 9, 1971 is reprinted herein as Appendix A. The opinion of the Louisiana Court of Appeal for the First Circuit rendered on October 2, 1972 is reported at 268 So. 2d 702 (1972) and is reprinted herein as Appendix B. The opinion of the Louisiana Supreme Court rendered on September 24, 1973 is reported at 283 So. 2d 748 (La. 1973) and is reprinted herein as Appendix C. The judgment rendered by the 23rd Judicial District Court for the Parish of Ascension dated December 9, 1971, which judgment dismisses the plaintiff's suit on the exception of res judicata is reprinted herein as Appendix D. The judgment of the 23rd Judicial District Court for the Parish of Ascension dated January 21, 1972 denying the plaintiff's motion for a new trial on the exception is reprinted herein as Appendix E. The order of the Louisiana Supreme Court dated October 26, 1973 denying rehearing is reprinted herein as Appndix F.

JURISDICTION

The opinion of the Louisiana Supreme Court in this matter was rendered on September 24, 1973. See, Appendix C. The defendant's petition for certiorari to this Court was filed less than ninety (90) days after September 24, 1973. See, Rule 22, Rules of the Supreme Court of the United States. The jurisdiction of this Court invoked under 28 USCA § 1257(3).

QUESTION PRESENTED

The question presented is whether or not under the Full Faith and Credit Clause of the U. S. Constitution, Art. IV, §1, a final award of workmen's compensation benefits under the Texas Workmen's Compensation Act precludes a claimant from thereafter seeking additional workmen's compensation benefits for the same injury under the Louisiana Workmen's Compensation Act?

CONSTITUTIONAL PROVISION

The constitutional provision at issue in this case is found at Art. IV §1 of the U. S. Constitution providing in pertinent part that, "Full Faith and Credit shall be given in each State to the public Acts Records, and judicial Proceedings of every other State."

STATEMENT OF FACTS

The plaintiff, Newal W. Griffin, is a resident of Houston, Texas where he was employed as a truck driver by Keller Industries, Inc. (Keller), a corporation organized and domiciled in the State of Texas and engaged in interstate shipment of materials and goods. Keller, a member of the Motor Truck Owners Conference, Inc., was insured by a workmen's compensation insurance policy issued by defendant Universal Underwriters Insurance Company (Universal). On June 29, 1970, while driving one of his employer's trucks which had been leased to U.S. Van Lines, Inc., the plaintiff was involved in a motor vehicle accident in Ascension Parish, Louisiana from which accident he received serious personal injuries.

The plaintiff notified his employer, Keller, of the accident who in turn immediately informed U.S. Van Lines, the latter company then informing Universal. On July 21, 1970, Universal filed a report of the accident and resulting injury to the plaintiff with the Industrial Accident Board of the State of Texas (Texas Industrial Accident Board). The Texas Industrial Accident Board opened a file on the claim, and directed correspondence to the plaintiff requesting that all inquiries regarding his claim be made to the Board. In due course, defendant Universal initiated payment of workmen's compensation benefits to the plaintiff at the rate of $49.00 per week, the maximum allowable for permanent disability under the applicable workmen's compensation statutes of

both the State of Texas and the State of Louisiana. Universal also paid medical expenses to the plaintiff in the amount of $18,681.62.

On April 22, 1971, while still receiving workmen's compensation benefits from Universal, and without any notification to Universal, the plaintiff and his attorney settled the plaintiff's tort claim against the third party tortfeasor, executing at Houston, Texas an instrument styled a "Release, Indemnity, and Warranty Agreement," which provided in pertinent part:

> "Received of [third party tortfeasor] and State Farm Mutual Automobile Insurance Company the sum of Ten Thousand and No/100 ($10,000.00) Dollars, in consideration of which the undersigned Newal W. Griffin releases and discharges the said [third party tortfeasor] from any and all claims resulting from the automobile accident of 29 June 1970 . . .
>
> * * *
>
> "As an inducement for State Farm Mutual Automobile Insurance Company to pay him its policy limit of Ten Thousand and No/100 ($10,000.00) Dollars for bodily injury to one person under the terms of its automobile liability insurance policy issued to [third party tortfeasor], and as a further consideration for such payment, Newal W. Griffin hereby agrees to indemnify and protect State Farm Mutual Automobile Insurance Company and hold it harmless, against any workmen's compensation subrogation claim, or claim for damages, or other claims, that may be asserted against State Farm Mutual Automobile Insurance Company by Newal W. Griffin's employer and/or the workmen's compensation insurer of said employer . . ."

Sometime thereafter, in June, 1971, Universal became aware of the fact that the plaintiff had settled the tort claim and on June 29, 1971, Universal notified the plaintiff of its intention to suspend further workmen's compensation payments in accord with the applicable law of Texas. On July 14, 1971, Universal did in fact request the Texas Industrial Accident Board to suspend payment of further workmen's compensation benefits to the plaintiff in accord with Vernon's Ann.Civ.St., Art. 8307, §6a., which provides in pertinent part as follows:

> "§6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the [employer] to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the [employer], then he shall not be entitled to compensation under this law. If compensation be claimed under this law by the injured employee or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employee . . ."

The plaintiff made demand upon defendant Universal for resumption of workmen's compensation benefits, the same being denied, and on July 27, 1971, plaintiff filed this suit against Universal for workmen's compensation benefits under the Louisiana Workmen's Compensation Act, LSA-R.S. 23:-1021, Et. Seq. Unlike the Texas Act, the Louisiana Act permits the plaintiff to claim both workmen's compensation benefits from his employer and damages from the third party tortfeasor, the pertinent statute providing as follows:

> "When an injury for which compensation is payable under this Chapter has been sustained under

> circumstances creating in some person (in this Section referred to as third person) other than the employer a legal liability to pay damages in respect thereto, the injured employee or his dependent may claim compensation under this Chapter and the payment or award of compensation hereunder shall not affect the claim or right of action of the injured employee or his dependent against such third person, nor be regarded as establishing a measure of damages for the injury; and such injured employee or his dependent may obtain damages from or proceed at law against such third person to recover damages for the injury." LSA-R.S. 23:1101.

On August 18, 1971 the Texas Industrial Accident Board rendered the following ruling with respect to the plaintiff's Texas claim:

> "The Board finds that by reason of said Release, Indemnity, and Guarantee Agreement with the Third Party, said employee has made a final election, and all additional claims for benefits under the Texas Workmen's Compensation Act are denied."

The record discloses that the plaintiff and his attorney were each furnished with a copy of this ruling, the notice stating clearly and unmistakably that the plaintiff had a right to appeal the ruling within twenty (20) days from the date thereof. The plaintiff did not file an appeal within the stipulated time and the award became final. Instead, as noted above, on July 27, 1971 the plaintiff filed the instant suit in the 23rd Judicial District Court for the Parish of Ascension in the State of Louisiana. It was in this suit that Universal filed its in limine exception of res judicata urging that the final award of the Texas Industrial Accident Board precluded any further claim for workmen's compensation benefits in Louisiana.

The trial court sustained the exception and on December 9, 1971 entered a judgment dismissing the suit. The plaintiff appealed the trial court decision to the Court of Appeal for the First Circuit, which court rendered an opinion on October 2, 1972 affirming the trial court. The plaintiff then applied for and was granted a writ of certiorari to the Louisiana Supreme Court, the writ being granted on January 15, 1973. On September 24, 1973 the Louisiana Supreme Court rendered an opinion overruling the Court of Appeal and remanded the case to the trial court for further action.

Throughout these proceedings, Universal has relied on the Full Faith and Credit Clause of the U.S. Constitution, contending the ruling of August 18, 1971 by the Texas Industrial Accident Board was final and could not, if you will, be collaterially attacked by filing another suit for workmen's compensation benefits in the State of Louisiana. The applicability vel non of the Full Faith and Credit Clause was first raised by Universal in its in limine exception and has been urged consistently thereafter.

REASONS FOR GRANTING THE WRIT

The Louisiana Supreme Court failed to implement the Full Faith and Credit Clause, a course of action required under the circumstances of this case by *Magnolia Petroleum Co. vs. Hunt*, 320 U.S. 430, 64 S.Ct. 208, 88 L.Ed. 149 (1944).

The trial court and Court of Appeal each found *Magnolia* to be controlling, the issue there being posed by then Chief Justice Stone as follows:

> "The question for decision is whether, under the Full Faith and Credit Clause, Art. IV, §1 of the Constitution of the United States, an award of compensation for personal injury under the Texas Workmen's Compensation Law, Title 130 of the Revised

> Civil Statutes of Texas, Vernon's Ann.Civ.St. art. 8306 et seq. bars a further recovery of compensation for the same injury under the Louisiana Workmen's Compensation Law, Title 34, Chapter 15 of the Louisiana General Statutes Act No. 20 of 1914, as amended."

The facts before the Court in *Magnolia* are reported as follows:

> "The respondent Hunt is a resident of Louisiana employed in that state by the petitioner and sent by the petitioner to do work in Texas. While in Texas he was seriously injured in the course of his employment. Confined to a hospital he was told that he could not recover compensation unless he signed two forms presented to him. As found by the Louisiana trial judge there was printed on each of the forms 'in small type' the designation 'Industrial Accident Board, Austin, Texas.' To get his compensation Hunt signed the forms and the Texas insurer began to pay. Returning to his home in Louisiana Hunt apparently discovered that his interests would be more fully protected under the Louisiana law and notified the insurer of an intention to claim under the statute of that state. The insurer immediately stopped payment to him and notified the Texas Board to that effect. Four days later, without any request from Hunt, the Board notified him at his Louisiana home that a hearing would be held in Texas within two and one-half weeks 'to determine the liability of the insurance company' under Texas law. Hunt did not participate in that proceeding. The Texas Board thereafter made an award to him which, under the law of Texas, was equivalent to a judgment against the insurer. Before the Texas award became final, Hunt, who had declined to accept any money under it, filed suit against his employer in the Courts of Louisiana under the Workmen's Compensation Law of Louisiana. He recovered a judgment for a substantially larger sum than had been allowed him

> under the Texas award, from which the Louisiana Court deducted the sum he had already received from the Texas insurer." 320 U.S. at 450-451, 64 S.Ct. at 219.

This Court held in *Magnolia* that a final ruling rendered by the Texas Industrial Accident Board was res judicata and as such precluded the claimant there from seeking further benefits under the Louisiana Workmen's Compensation Act. In this case, Universal contends that the facts are even stronger against the plaintiff's position than in *Magnolia* where the Texas award was invoked to pretermit recovery of additional workmen's compensation benefits in Louisiana by a resident of Louisiana who had been employed in Louisiana. In this case, the plaintiff is a resident of Texas who was employed in Texas by a Texas corporation and now seeks to avail himself of what he considers to be the more liberal benefits afforded by the Louisiana Workmen's Compensation Act solely on the basis of the fact that the accident in which he was injured occurred in Louisiana.

There can be no doubt whatsoever that the Texas Industrial Accident Board had jurisdiction to render a final award of workmen's compensation benefits in this case because it involves a resident of Texas who was employed in Texas by a Texas corporation notwithstanding that the accident giving rise to the compensable injury occurred in Louisiana. The pertinent statute is Vernon's Ann.Civ.St., Art. 8306, §19, which provides as follows:

> "§19. If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even if such inujry was received outside of the State . . .
>
> * * *

> "Providing that such injury shall have occurred within one year from the date such injured employee leaves this state; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the State where such injury occurred."

We note too that it has been held time and again that a final ruling of the Texas Industrial Accident Board has the same force and effect as a final judgment of a court of that State. See, *Gentry vs. Travelers Insurance Co.*, 459 S.W. 2d 709 (Tex.Civ.App. 1970); *Ocean Accident & Guaranty Corporation vs. Pruitt*, 58 S.W.2d 41 (Tex.Civ.App. 1933).

The Louisiana Supreme Court declined to follow *Magnolia* and instead based its decision on *Industrial Commission of Wisconsin vs. McCartin*, 330 U.S. 622, 67 S.Ct. 886, 91 L.Ed. 1140 (1947). *McCartin* held that an award of workmen's compensation benefits under the Illinois workmen's compensation law did not preclude a further claim for benefits for the same injury under the Wisconsin workmen's compensation law. As the plaintiff would have it, *McCartin* overrules *Magnolia* and permits successive recovery of workmen's compensation benefits in more than one state for the same injury. We think not. *McCartin* itself clearly distinguishes *Magnolia* with the following language:

> "If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury, *the decision in the Magnolia Petroleum Co. case would be controlling here.* The Court [in *Magnolia*] found that the compensation award under the Texas workmen's compensation law, was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state . . . and since

> the Texas award had the degree of finality contemplated by the Full Faith and Credit Clause, it was held that Louisiana was constitutionally forbidden from entering a subsequent award under its statute . . ." (Emphasis added.)

As further evidence of the fact that *Magnolia* is alive and well, we call the Court's attention to *Carroll vs. Lanza*, 349 U.S. 408, 75 S.Ct. 804, ————L.Ed.———— (1955). In *Carroll*, a resident of Missouri, while receiving compensation payments under Missouri law, for an injury sustained in Arkansas, was permitted to maintain an action for common law damages under Arkansas law notwithstanding the fact that the Missouri Workmen's Compensation Act provided that the rights and remedies granted hereunder "shall exclude all other rights and remedies . . . common law or otherwise." The Supreme Court through Justice Douglas for the majority with Justice Butler, Frankfurter and Harlan dissenting held:

> "The Court of Appeals thought *Magnolia Petroleum Co. vs. Hunt*, 320 U.S. 430, 64 S.Ct. 208, 88 L.Ed. 149, to be controlling. There the employee having received a final award for compensation in the forum of the injury returned to his home State and sued to recover under its Compensation Act. We held that the latter suit was precluded by the Full Faith and Credit Clause. But here there was no final award under the Missouri Act. Under that Act the statutory payments apparently start automatically upon receipt of notice of the injury. Mo.Rev. Stat. 1949, §§287.380, 287.400, V.A.M.S. While provisions are made for an adjudication of disputes between an employee and his employer (id. §§287.400, 287.450), no adjudication was sought or obtained here." 349 U.S. at 410-411, 75 S.Ct. at 806.

The Louisiana Supreme Court in this case declined to extend Full Faith and Credit to the final award of the Texas

Industrial Accident Board because of the following language found in *McCartin*:

> "* * * The reservation spells out what we believe to be implicit in that Act — namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, that fact is of decisive significance.
>
> "Since this Illinois award is final and conclusive only of rights arising in Illinois, Wisconsin is free under the Full Faith and Credit Clause to grant an award of compensation in accord with its own laws. *Magnolia Petroleum Co. vs. Hunt*, 320 U.S. 430, 88 L.Ed. 149, 64 S.Ct. 208, 150 ALR 413, 15 NCCA NS 529, supra, thus does not control this case."

McCartin notwithstanding, the plain fact of the matter is that this Court in *Magnolia* has held squarely that an award of workmen's compensation benefits by the Texas Industrial Accident Board is a final and complete adjudication of all rights and causes of action for workmen's compensation benefits and as such entitled to Full Faith and Credit by sister States. We have already noted that Texas considers an award of the Texas Industrial Accident Board to have the same force and effect as a final judgment of the Courts of that state. See, *Gentry vs. Travelers Insurance Co.*, supra; *Ocean Accident & Guaranty Corporation vs. Pruitt*, supra. The Louisiana Supreme Court read *McCartin* to require "unmistakable language" in the Texas Workmen's Compensation Act which would operate to foreclose the plaintiff's right to further workmen's compensation benefits in the State of Louisiana. That inquiry, however, has already been answered by this Court in *Magnolia* which held that such an award was indeed final and entitled to the benefit of the Full Faith and Credit Clause. Cf., *Gasch vs. Britton*, 202 F.2d 356 (D.C.Cir. 1952).

Universal acknowledges that there are cases which have applied *McCartin* to permit successive awards of workmen's compensation benefits for the same injury in different states. See, e.g., *Agee vs. Industrial Commission*, 10 Arizona App. 1, 455 P.2d 288 (1969); *deCancino vs. Eastern Airlines*, 239 So.2d 15 (Fla. 1970); *Martin vs. L & A Contracting Company*, 249 Miss. 441, 162 So.2d 870 (1964); 3 Larson, *Workmen's Compensation*, 369-380.

These cases are not relevant here however, because this court has already held in *Magnolia* that a final award of the Texas Industrial Accident Board precludes a claimant from seeking further workmen's compensation benefits in the State of Louisiana, the very fact situation presented by this case.

CONCLUSION

For these reasons, petitioner Universal Underwriters Insurance Company prays that a writ of certiorari issue to review the opinion of the Louisiana Supreme Court rendered in these proceedings on September 24, 1973.

By Attorneys,

SEALE, SMITH & PHELPS
8225 Florida Boulevard
P. O. Box 15766, Broadview Station
Baton Rouge, Louisiana 70815

BY:
A. G. SEALE

CERTIFICATE

I hereby certify that a copy of the above and foregoing petition for a writ of certiorari has been mailed this day, postage prepaid, in compliance with Rule 33 of the Supreme Court of the United States to Mr. Paul H. Due', 519 Florida Boulevard, Denham Springs, Louisiana 70726.

Baton Rouge, Louisiana, this 20 day of December, 1973.

A. G. SEALE

APPENDIX A

NEWAL W. GRIFFIN	STATE OF LOUISIANA
VERSUS NO. 17,592	PARISH OF ASCENSION
UNIVERSAL	23RD JUDICIAL
UNDERWRITERS	DISTRICT COURT
INSURANCE COMPANY	s/Deputy Clerk
Filed: Dec. 9, 1971	Clerk of Court

REASONS FOR JUDGMENT

Plaintiff, a resident of the state of Texas, was employed in Texas by a Texas corporation, Keller Industries, Inc., as a truck driver. Keller Industries, Inc., as a member of Motor Truck Owners Conference, Inc., of Kansas City, Missouri, was covered by a Workmen's Compensation Policy issued by Universal Underwriters Insurance Company, also of Kansas City, Missouri, which according to the "Certificate of Insurance" issued by Universal Underwriters to Keller Industries, Inc., "protects all of its members and employees in accordance with the Workmen's Compensation Benefits applicable in each state." The Cerifticate of Insurance offers no amplification of what is meant by the phrase, "applicable in each state", and the policy itself is not filed in evidence.

Nn June 29, 1970, while driving a truck in the state of Louisiana, plaintiff was severely injured and permanently disabled when his vehicle was struck by an automobile owned by Leslie S. Richard and being driven by his wife, Connie C. Richard. The Richard vehicle was insured by State Farm Mutual Automobile Insurance Company.

The accident was routinely reported by Motor Truck Owners Conference, Inc. to Universal Underwriters which under date of July 21, 1970, made a "Report Of Initial Payment of Compensation" to the Industrial Accident Board of the State of Texas. The Industrial Accident Board thereafter under date of July 31, 1970, established a file on the claim

and sent Universal Underwriters a form letter stating, "A file has been established on above described injury, and Notice of Injury and Claim for Compensation forms mailed to the employee." The correspondence directed to plaintiff and to Universal Underwriters contains the following admonition: "ATTENTION - - - ALL INTERESTED PARTIES - - - All Future Correspondence And Communication Concerning This Case Should Be Directed To The INDUSTRIAL ACCIDENT BOARD . . . ." There is no proof however that the plaintiff ever received the notice and forms in question, and the record contains no "Claim for Compensation" or similar forms completed or signed by the plaintiff.

Universal Underwriters continued to pay compensation benefits to plaintiff at the rate of $49.00 per week from June 29, 1970, which payments were accepted by the plaintiff, and in addition paid medical expenses of $18,681.62.

On April 22, 1971, while still receiving compensation payments from Universal, and without any notification to Universal, the plaintiff and his attorney executed at Houston, Texas, an instrument entitled "Release, Indemnity, and Warranty Agreement" which provided in part as follows:

> Received of Connie C. Richards, Leslie S. Richard, and State Farm Mutual Automobile Insurance Company the sum of Ten Thousand and no/100 ($10,000.00) Dollars, in consideration of which the undersigned Newell W. Griffin releases and discharges the said parties from any and all claims resulting from the automobile accident of 29 June 1970 . . . .
>
> * * * *
>
> As an inducement for State Farm Mutual Automobile Insurance Company to pay him its policy limit of Ten Thousand and no/100 ($10,000.00) Dollars, for bodily injury to one person under the terms of its automobile liability policy issued to

> Leslie S. Richard, and as a further consideration for such payment, Newell W. Griffin hereby agrees to indemnify and protect State Farm Mutual Automobile Insurance Company and hold it harmless, against any workers' compensation subrogation claim, or claim for damages, or other claims, that may be asserted against State Farm Mutual Automobile Insurance Company by Newell W. Griffin's employer and/or the workmens compensation insurer of said employer . . . .

Universal Underwriters did not learn of the execution of this instrument until sometime in June 1971. Thereafter, on June 29, 1971, it notified plaintiff of its intention to suspend compensation benefits, and on July 14, 1971, it requested the Industrial Accident Board to grant a suspension of compensation benefits on the basis of Texas Revised Civil Statutes Art. 8307, sec. 6a., which provides in part as follows:

> Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employe' may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under this law. If compensation be claimed under this law by the injured employe' or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employe'. . . .

Plaintiff made demand upon Universal Underwriters for resumption of compensation benefits, which was denied, and on July 27, 1971, plaintiff filed this suit against Universal for benefits under the Louisiana statute which is of course more favorable to plaintiff's position than the Texas statute

quoted above. On August 18, 1971, the Texas Industrial Accident Board rendered a final award stating:

> The Board finds that by reason of said Release, Indemnity and Guaranty Agreement with the Third Party, said employee has made a final election, and all additional claims for benefits under the Texas Workmen's Compensation Act are denied.

The plaintiff and his attorney were both individually furnished with a copy of this final award and notified of the right to "appeal therefrom within 20 days from the date of this final award." No appeal was taken within the stipulated time, the award became final, and defendant filed in this suit a peremptory exception of res judicata based upon that final award.

Defendant relies primarily upon the decision of the United States Supreme Court in Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 64 S.Ct. 208 (1943), wherein the Court stated:

> The question for decision is whether, under the full faith and credit clause, Art. IV, § 1 of the Constitution of the United States, an award of compensation for personal injury under the Texas Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, Vernon's Ann.Civ.St. art. 8306 et seq., bars a further recovery of compensation for the same injury under the Louisiana Workmen's Compensation Law, Title 34, Chapter 15 of the Louisiana General Statutes, Act No. 20 of 1914, as amended.

Chief Justice Stone, speaking for the majority, answered in the affirmative. Justices Black, Douglas, Murphy and Rutledge dissented.

The factual background in Magnolia is succinctly set forth in Justice Black's dissenting opinion as follows:

> The respondent Hunt is a resident of Louisi-

ana, employed in that state by the petitioner and sent by the petitioner to do work in Texas. While in Texas he was seriously injured in the course of his employment. Confined to a hospital he was told that he could not recover compensation unless he signed two forms presented to him. As found by the Louisiana trial judge there was printed on each of the forms "in small type" the designation "Industrial Accident Board, Austin, Texas." To get his compensation Hunt signed the forms and the Texas insurer began to pay. Returning to his home in Louisiana Hunt apparently discovered that his interests would be more fully protected under Louisiana Law and notified the insurer of an intention to claim under the statute of that state. The insurer immediately stopped payment to him and notified the Texas Board to that effect. Four days later, without any request from Hunt, the Board notified him at his Louisiana home that a hearing would be held in Texas within two and a half weeks "to determine the liability of the insurance company" under Texas law. Hunt did not participate in that proceeding. The Texas Board thereafter made an award to him which, under the law of Texas, was equivalent to a judgment against the insurer. Before the Texas award became final Hunt, who had declined to accept any money under it, filed suit against his employer in the courts of Louisiana under the Workmen's Compensation Law of Louisiana. He recovered a judgment for a substantially larger sum than had been allowed him under the Texas award, from which the Louisiana court deducted the sum he had already received from the Texas insurer. (320 U.S. at pages 450-451, 64 S.Ct. at page 219).

There does not appear to be any significant factual difference between Magnolia and the present case. Counsel for plaintiff strenuously argues that his client took no affirmative action seeking compensation under Texas law and that he was not aware of the fact that the compensation benefits

and medical payments received by him were being made in accordance with the proceedings initiated by the insurer of his employer before the Industrial Accident Board. But neither was Hunt, the employee in Magnolia, aware of the fact that the two forms presented to him for his signature were documents prepared by the Industrial Accident Board. In neither case did the employee participate in the proceedings before the Board and in both instances the employee filed suit in Louisiana before the Texas award became final.

The facts here are even stronger against the plaintiff's position that in Magnolia where the Texas award was invoked to defeat recovery in Louisiana by a resident of Louisiana who had been employed in Louisiana. Here the plaintiff is a resident of the state of Texas who was employed in Texas by a Texas corporation and now seeks to avail himself of the more liberal benefits afforded under the Louisiana statute solely on the basis of the fact that Louisiana is the situs of the accident.

There can be no doubt that Texas had jurisdiction to render a final award involving a resident of Texas who was employed in Texas by a Texas corporation notwithstanding the fact that the injury was received outside of the state. Texas Revised Civil Statutes Art. 8306, sec. 19, provides as follows:

> Sec. 19. If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State . . . .
>
> * * * *
>
> Providing that such injury shall have occured within one year from the date such injured employee leaves this State; and provided, further, that no re-

> covery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred.

Counsel for plaintiff points to the last quoted paragraph as evidencing an intention on the part of the Texas legislature to permit an injured employee to elect to pursue his remedy and recover in the state where the injury occurs. This is not however precisely what the statute says. It is couched in terms of preventing double recovery, not in terms of granting to the injured employee an exclusive right to elect the forum. It does not purport to deny to the employer the right to a determination of liability under Texas law. In Magnolia the Court construed the statute in light of its legislative history as follows:

> The Texas Court of Civil Appeals formerly held that a Texas employee could recover compensation of his Texas employer for an injury in another state for which he had already recovered compensation in that state. Texas Employers' Ins. Ass'n. v. Price, Tex.Civ.App., 300 S.W. 667. But in declining to review the case, the Texas Supreme Court expressly pointed out that this ruling had not been challenged, and that it was leaving the question undecided, 300 S.W. 672. The right of a second recovery in such circumstances was promptly abolished by statute. Revised Civil Statutes, Art. 8306, § 19. (320 U.S. at page 435, 64 S.Ct. at page 212).

The majority opinion of Chief Justice Stone concluded:

> The remedies afforded to respondent by the Texas and Louisiana Workmen's Compensation Laws are . . . rendered mutually exclusive by the Texas judgment and the full faith and credit clause. The Texas award, being a bar to any further recovery of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his

> remedy under the Louisiana Act. (320 U.S. at page 442, 64 S.Ct. at page 215).

Justice Black in his dissenting opinion took the contrary view:

> Plainly this . . . statute pertains only to the right of recovery under Texas law; it does not purport to affect rights under the laws of other states. Nor does it proceed on any theory of res judicata for if an employee fails to recover in the other state he can nevertheless recover an award in Texas. (320 U.S. at page 454, 64 S.Ct. at page 221).

Counsel for plaintiff however cites and relies upon the later case of Carroll v. Lanza, 349 U.S. 408, 75 S.Ct. 804 (1955), where Carroll, a resident of Missouri employed in Missouri while receiving compensation payments under Missouri law for an injury sustained in Arkansas was permitted to maintain an action for commonlaw damages under Arkansas law notwithstanding the fact that the Missouri Act provided that the rights and remedies granted hereunder "shall exclude all other rights and remedies . . . at common law or otherwise." In reversing a contrary opinion by the Court of Appeals, the Supreme Court through Justice Douglas for the majority with Justices Frankfurter, Butler, and Harlan dissenting, said:

> The Court of Appeals thought Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 64 S.Ct. 208, 88 L.ed. 149, to be controlling. There the employee having received a *final award* for compensation in the forum of the injury returned to his home State and sued to recover under its Compensation Act. We held that the latter suit was precluded by the Full Faith and Credit Clause. But here there was no final award under the Missouri Act. Under that Act the statutory payments apparently start automatically on receipt of notice of the injury. Mo.Rev.Stat. 1949. § § 287.380, 287.400, V.A.M.S. While provision is made for an adjudication of disputes between an

> employee and his employer (i.d., § § 287.400, 287.-450), no adjudication was sought or obtained here. (349 U.S. at pages 410-411, 75 S.Ct. at page 806).

The two cases are obviously distinguishable in that in Carroll there was no final award as in Magnolia and hence no basis for a plea of res judicata. Carroll did not purport to either overrule or modify Magnolia. Even if it be conceded that Carroll represents an exception to Magnolia, the exception does not fit the facts here as it would only if (1) there had been no final award in Texas, and (2) this were an action against the third party, Richard, and his insurer, State Farm, rather than a demand for further compensation from Universal Underwriters. This court is powerless to grant or extend an exception to the full faith and credit clause, that being the exclusive province of the United States Supreme Court. As Chief Justice Stone said in Magnolia:

> Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, this Court is the final arbiter of the extent of the exceptions. (320 U.S. at page 438, 64 S.Ct. at page 213).

This court is in accord with the views expressed in the dissenting opinion of Justice Black in Magnolia. Were it my prerogative to do so I would overrule Magnolia or at least restrict its application to those instances where an employee, knowing of two remedies which purport to be mutually exclusive, knowledgably chooses one as against the other and is thereafter precluded from a second choice. But recognizing the supremacy of the Supreme Court of the United States as the "final arbiter" in these conflict of laws problems I have no choice but to apply the rule of Magnolia, sustain the defendant's plea of res judicata, and dismiss the plaintiff's suit at his costs.

APPENDIX B

NEWAL W. GRIFFIN	STATE OF LOUISIANA
VERSUS	COURT OF APPEAL
UNIVERSAL UNDERWRITERS	FIRST CIRCUIT
INSURANCE COMPANY	NO. 8975

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT WITHIN AND FOR THE PARISH OF ASCENSION, HONORABLE PENROSE ST. AMANT, JUDGE

BEFORE: LANDRY, ELLIS AND TUCKER, JJ.

TUCKER, J.

This suit involves a workmen's compensation action for total and permanent disability sustained by plaintiff-appellant due to injuries received in an accident on June 29, 1970, on U. S. Highway 61, in Ascension Parish, State of Louisiana, when the truck which plaintiff was driving was struck by an automobile owned by Leslie S. Richard, and driven by his wife Connie C. Richard, said automobile being insured by State Farm Mutual Automobile Insurance Company. Plaintiff's injuries required him to be hospitalized at the Baton Rouge General Hospital for four and one-half months following the accident, and he has remained in the care of a Baton Rouge orthopedist, Dr. Allen Jackson, ever since the accident.

Plaintiff, a resident of and domiciled in Houston, Texas, was employed as a truck driver in Houston, Texas, by Keller Industries, Inc., a Houston corporation whose president was Marvin Keller, plaintiff's stepson. Keller Industries, Inc. as a member of Motor Truck Owners Conference, Inc., of Kansas City, Missouri, was covered by a workmen's compensation policy issued by Universal Underwriters Insurance Company, also of Kansas City, Missouri, which, according to the "Certificate of Insurance" issued by Universal Underwriters to

Keller Industries, Inc., protects all of its members and employees in accordance with the "Workmen's Compensation Benefits applicable in each state."

The accident in which plaintiff was injured was routinely reported by Motor Truck Owners Conference, Inc., to Universal Underwriters which, under date of July 21, 1970, made a "Report of Initial Payment of Compensation" to the Industrial Accident Board of the State of Texas. On July 31, 1970, the Texas Industrial Accident Board established a file on plaintiff's claim and sent Universal Underwriters a letter so stating. The Industrial Accident Board directed correspondence to the plaintiff requesting him to direct all future correspondence regarding this claim to the Industrial Accident Board. There is no proof, however, that the plaintiff actually received this notice, nor that he ever directed any claim for compensation or other similar form to the Industrial Board, or signed any such form used by the Board. Universal Underwriters began to pay plaintiff at the rate of Forty-nine and no/100 ($49.00) Dollars per week, on June 29, 1970, and continued to make payments to plaintiff for fifty-one (51) weeks, and all of these payments were accepted by plaintiff, plus a payment of Eighteen Thousand Six Hundred Eighty-one and 62/100 ($18,681.62) Dollars for medical expenses.

On April 22, 1971, while still receiving compensation payments from Universal Underwriters, and without any notification to Universal, the plaintiff and his attorney executed at Houston, Texas, an instrument entitled: "Release, Indemnity, and Warranty Agreement", which provided in part as follows:

> "Received of Connie C. Richard, Leslie S. Richard, and State Farm Mutual Automobile Insurance Company the sum of Ten Thousand no/100 ($10,000.00) Dollars, in consideration of which the undersigned

Newell W. Griffin releases and discharges the said parties from any and all claims resulting from the automobile accident of 29 June 1970.....

* * * * * *

"As an inducement for State Farm Mutual Automobile Insurance Company to pay him its policy limit of Ten Thousand and no/100 ($10,000.00) Dollars, for bodily injury to one person under the terms of its automobile liability policy issued to Leslie S. Richard, and as a further consideration for such payment, Newell W. Griffin hereby agrees to indemnify and protect State Farm Mutual Automobile Insurance Company and hold it harmless, against any workers' compensation subrogation claim, or claim for damages, or other claims, that may be asserted against State Farm Mutual Automobile Insurance Company by Newell W. Griffin's employer and/or the workmens compensation insurer of said employer * * * * * *"

Universal Underwriters did not learn of the execution of this instrument until sometime in June 1971. Thereafter, on June 29, 1971, it notified plaintiff of its intention to suspend compensation benefits, and on July 14, 1971, it requested the Industrial Accident Board to grant a suspension of compensation benefits on the basis of Texas Revised Civil Statutes Art. 8307, sec. 6a., which provides in part as follows:

"Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compen-

> sation under this law. If compensation be claimed under this law by the insured employé or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employé * * * * *"

Plaintiff made demand upon Universal Underwriters for resumption of compensation benefits, which was denied, and on July 27, 1971, plaintiff filed the instant suit against Universal for workmen's compensation benefits under the Louisiana statute, which provides compensation for total and permanent disability for 500 weeks instead of 400 weeks as provided in Texas, and which also permits the injured employee to proceed against both the third party who caused the injury, as well as against the employer's insurer for workmen's compensation benefits. In his suit plaintiff asked that credit be given for workmen's compensation and medical payments already made, and that he be awarded statutory penalties on all sums owing, due to defendant's arbitrary refusal to make further payment after June 29, 1971, and for attorney fees and interest as provided by law from the date of judicial demand, plus all costs.

On August 18, 1971, the Texas Industrial Accident Board rendered a final award stating:

> "The Board finds that by reason of said Release, Indemnity and Guaranty Agreement with the Third Party, said employee has made a final election, and all additional claims for benefits under the Texas Workmen's Compensation Act are denied."

The plaintiff and his attorney were both individually furnished with a copy of this final award and notified of the right to "appeal therefrom within 20 days from the date of this final award." No appeal was taken within the stipulated time, and the award became final.

Meanwhile plaintiff, on August 6, 1971, had set a pre-trial conference on the Louisiana suit for August 27, 1971. On August 18, 1971, defendant filed a peremptory exception of no right or cause of action based on the payments being made to plaintiff under Texas contract, according to Texas Industrial Board Claim, File No. X63541-H; and also a dilatory exception of prematurity based on the action pending in Texas in regard to the compromise settlement and release of liability plaintiff had effected with some one other than the subscriber and his insurer, which allegedly impaired defendant's right of recovery against the tortfeasor herein. The pre-trial conference date was later moved to September 22, 1971, to give time for an appeal from the final determination of the Texas Industrial Accident Board. When none was made within 20 days of the final award, defendant, on September 15, 1971, filed a peremptory exemption of *res judicata* citing the final award of plaintiff's claim by the Texas Industrial Accident Board.

On December 9, 1971, the trial judge pretermitted argument on defendant's other exceptions and restricted argument to his exception of *res judicata*, giving defendant judgment on this peremptory exception and dismissing plaintiff's suit at his cost. Plaintiff's motion for a new trial was denied subsequently and plaintiff has appealed, alleging error by the trial court in dismissing his suit and upholding defendant's peremptory exception of *res judicata*, when he allegedly never filed a claim for workmen's compensation in Texas and allegedly knew nothing of the file in his name held by the Texas Industrial Accident Board until he effected the compromise settlement with the third party tortfeasor. Plaintiff alleges error by the trial judge, also, in concluding that defendant had the right to treat plaintiff's workmen's compensation payments as being made pursuant to the law of Texas, when the contract documents binding defendant obligate it

to make workmen's compensation payments in accordance with the law of the state in which the van line was domiciled, which is the State of Georgia in this case, inasmuch as the truck being operated by plaintiff at the time of the accident was under lease to U. S. Van Lines, Inc., of Atlanta, Georgia.

In his well-written reasons for judgment the trial judge based his decision primarily upon the analogous case of *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 64 S. Ct. 208 (1943). In that case a Louoisiana resident was employed in Louisiana, but was sent to work in Texas where he was injured. He made claim for workmen's compensation under the Texas statute while in the hospital there. Payment was begun. When he returned home to Louisiana, he apparently discovered that his benefits would be greater in Louisiana, and notified the insurer of his intention to claim payment under Louisiana law. The insurer notified the Texas Industrial Accident Board and immediately stopped payment to plaintiff. Four days later the Texas Industrial Board notified plaintiff at his Louisiana home that a hearing would be held in Texas within two and a half weeks to determine the liability under Texas law. Plaintiff Hunt did not participate in these proceedings. Before the judgment denying him further payment became final, he filed suit against his employer in Louisiana under the Louisiana Workmen's Compensation law. He recovered a substantially larger sum than had been awarded him in Texas, subject to the deduction of the Texas payments. In the course of appealing the judgment, however, Magnolia Petroleum Company's plea of *res judicata* was upheld, and Louisiana was ordered to give full faith and credit to the final award of the Texas Industrial Accident Board.

There can be no doubt that Texas had jurisdiction to adjudicate the subject plaintiff's workmen's compensation claim under Tex. Rev. Civ. Stat., Art. 8306, Sec. 19. Moreover, plaintiff is a Texas domiciliary, employed in Texas by

a Texas company. The only point of contact with Louisiana in the present case is the mere fact that the accident happened on a Louisiana highway. Although this fact is sufficient to give Louisiana jurisdiction under the Louisiana Workmen's Compensation Act (R.S. 23:1313), Texas has far more reason to protect the interests of the plaintiff than Louisiana, and far more reason to protect the plaintiff's interests in this case than was the situation in the *Magnolia Petroleum Co.* case. This is not the issue in this case however. As so cogently oboserved in part by Chief Justice Stone in the *Magnolia Petroleum Co.* case:

"* * * * * * *

> Here both Texas and Louisiana have undertaken to adjudicate the rights of the same parties arising from a single injury sustained in the course of employment under the same contract. Each state has awarded to respondent compensation for that injury. But whether the Teaxs award purported also to adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana is irrelevant to our present inquiry. For Texas is without power to give extraterritorial effect to its laws. See New York Life Ins. Co. v. Head, 234 U.S. 149, 34 S. Ct. 879, 58 L. Ed. 1259; Home Insurance Co. v. Dick, 281 U. S. 397, 50 S. Ct. 338, 74 L. Ed. 926, 74 A.L.R. 701. *The significant question in this case is whether the full faith and credit clause has deprived Louisiana of the power to deny that the Texas award has the same binding effect on the parties in Louisiana as it has in Texas.* (Emphasis added.)
>
> It is not, as the state court thought, a sufficient answer to the bar of the Texas award to assert that Louisiana has a recognized interest in awarding compensation to Louisiana employees who are injured out of the state, see Alaska Packers Ass'n v. Industrial Accident Commission, supra, for Texas, the

state in which the injury occurred, has a like interest in making an award, see Pacific Employers Insurance Co. v. Industrial Accident Commission, supra. And in each of the cases we have cited, the state to which the judgment was brought had an interest in the subject matter of the suit and a public policy contrary to that of the state in which the judgment was obtained. * * * * *

In each of these cases the words and purpose of the full faith and credit clause were thought to demand that the interest of the state in which the judgment was obtained and was res judicata, should override the laws and policy of the forum to which the judgment was taken. And we can perceive no tenable ground for saying that a compensation award need not be given the same effect as res judicata in another state as it has in the state where rendered.

Such was the decision of this court in Chicago, R.I. & P.R. Co. v. Schendel, supra, in which recovery of an award of compensation under the Iowa Workmen's Compensation Act was held to bar recovery in a suit against the employer in Minnesota to recover for the same injury under the Federal Employers' Liability Act, 45 U.S.C.A. 51 et seq. Both sides (sic) had, as in this case, allowed recovery, as they were free to do but for the full faith and credit clause. This Court held that the employee, having had his remedy by the judgment in Iowa, was precluded by the full faith and credit clause from pursuing a remedy for his injury in another state. The remedies afforded to respondent by the Texas and Louisiana Workmen's Compensation Laws are likewise rendered mutually exclusive by the Texas judgment and the full faith and credit clause. The Texas award, being a bar to any further recovery of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act.

It lends no support to the decision of the Louisiana court in this case to say that Louisiana has chosen to be more generous with an employee than Texas has. Indeed no constitutional question would be presented if Louisiana chose to be generous to the employee out of the general funds in its Treasury. But here it is petitioner who is required to provide further payments to respondent, contrary to the terms of the Texas award, which, if the full faith and credit clause is to be given any effect, was "a conclusive determination between the parties that petitioner should be liable for no more than the amount of the Texas award. For this reason it is not enough to say that a practical reconciliation of the interests of Texas and Louisiana has been effected by the Louisiana court. There has been no reconciliation of the liability established by the Louisiana judgment with the rights conferred on petitioner by the Texas award and the full faith and credit clause.

* * * * *

Whether the proceeding before the State Industrial Accident Board in Texas be regarded as a 'judicial proceeding', or its award is a 'record' within the meaning of the full faith and credit clause and the Act of Congress, the result is the same. For judicial proceedings and records of the state are both required to have 'such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken'.

* * * * *

Respondent's injury in Texas did not give rise to two causes of action merely because recovery in each state is under a different statute, or because

each affords a different measure of recovery[1]. Chicago, R.I. & P.R. Co. v. Schendel, supra; Baltimore S.S. Co. v. Phillips, 274 U. S. 316, 47 S. Ct. 600, 71 L. Ed. 1069; see Wabash R. Co. v. Hayes, 234 U. S. 86, 90, 34 S. Ct. 729, 730, 58 L. Ed. 1226. The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot split up his claim and 'a fortiori, he cannot divide the grounds of recovery.' United States v. California & O. Land Co., 192 U. S. 355, 358, 24 S. Ct. 266, 267, 48 L. Ed. 476. Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds. The fact that a suitor has been denied a remedy by one state because it does not afford a remedy for the particular wrong alleged, may not bar recovery in another state which does provide a remedy. See Troxell v. Delaware, L. &. W. R. Co., 227 U. S. 434, 33 S. Ct. 274, 57 L. Ed. 586; cf. Ash Sheep Co. v. United States, 252 U. S. 159, 170, 40 S. Ct. 241, 244, 64 L. Ed. 507. But as we decided in the Schendel case it is a very different matter to say that recovery can be had in every state which affords a remedy.

The suggestion that there is a second and different cause of action in Louisiana, merely because Louisiana law authoriezs compensation, and in a different measure than does Texas, or because the jurisdiction of the court of one state depends on the place of the injury and that of the other on the place

1. Any implication to the contrary in Troxell v. Delaware, L. & W. R. Co., 227 U. S. 434, 33 S. Ct. 274, 57 L. Ed. 586, must be considered as overruled by Wabash R. Co. v. Hayes, 234 U. S. 86, 90, 34 S. Ct. 729, 730, 58 L. Ed. 1226; cf. Baltimore S. S. Co. v. Phillips, 274 U. S. 316, 323, 47 S. Ct. 600, 603, 71 L. Ed. 1069.

of the employment contract, would if accepted prove too much. Apart from the demands of full faith and credit, recovery in a transitory action for injury to person or property, whether in tort or for "compensation, can of course only be had in conformity to the law of the state where the action is maintained. Even where the state of the forum adopts and applies as its own the law of the state where the injury was inflicted, the extent to which it shall apply in its own courts a rule of law of another state is itself a question of local law of the forum. Finney v. Guy, 189 U.S. 335, 23 S.Ct. 558, 47 L. Ed. 839; Klaxon Co. v. Stentor Electric Co., supra, 313 U.S. at pages 496,497, 61 S. Ct. at pages 1021,1022, 86 L.Ed. 1477; cf. Worcester County T. Co. v. Riley, 302 U.S. 292, 299, 58 S. Ct. 185, 188, 82 L.Ed. 268.

* * * * *

If an employee employed in one state but injured in another has a different cause of action for compensation in each state because each has its own compensation statute, it could as well be argued in any case where plaintiff has recovered a judgment in one state, and seeks a second recovery in a second state for the same injury, that he is suing upon a second and different cause of action. But it has never been thought that an actionable personal injury gives rise to as many causes of action as there are states whose laws will permit a suit to recover for the injury or that despite the full faith and credit clause the injured person, more than one entitled to recover for breach of contract, could go from state to state to recover in each damages or compensation for his injury. A judgment in tort or in contract is not immune from the requirement of full faith and credit because the successful plaintiff could have maintained his suit under the law of other states and have secured a larger recovery in some, or because the jurisdiction of the court in one state to hear the cause may depend upon some facts dif-

> ferent from the facts necessary to sustain the jurisdiction in another. Cf. Baltimore S.S. Co. v. Phillips, supra; Eldred v. Michigan Ins. Bank, 17 Wall. 545, 21 L. Ed. 685; Wabash R. Co. v. Hayes, supra; Kenney v. Supreme Lodge, supra. And we cannot say that a workmen's compensation award for injury stands on any different footing. In fact Chicago, R. I. & P. R. Co. v. Schendel, supra, held that it did not and we see no reason to depart from its ruling.
>
> Reversed."

BUT says plaintiff's counsel, the Magnolia Petroleum Co. decision was predicated upon the plaintiff's having exercised a choice in the selection of his jurisdiction for suit or claim, and in the instant case the plaintiff had no choice and never made a selection until he filed this suit in Louisiana on July 27, 1971. Plaintiff seeks to reinforce his claim by quoting the following Texas statute which he argues reveals the intention of the Texas legislature to give the employee a choice as to where to pursue his remedy:

> "Sec. 19. If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State . . . .
>
> * * * * *
>
> Providing that such injury shall have occured within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred." (Tex. Rev. Civ. Stat. Art. 8306.)

As pointed out by the trial judge in his reasons for judgment, this Texas statute was not intended to give the em-

ployee an exclusive right to elect the forum, but to prevent double recovery, quoting from a history of the statute given in the Magnolia Petroleum Co. case at 320 U. S. 435, 64 Sup. Ct. 212.

In defense on the point of choice defendant alleges that plaintiff was notified that a file had been opened with the Texas Industrial Accident Board in regard to the accident and injuries herein involved and with respect to the state's compensation system under which he was being paid. Plaintiff denies ever having received any notice, and there is no evidence in the record to substantiate defendant's contention on this score. Nonetheless, we find it most difficult to believe that plaintiff, a Texas domiciliary who had contracted in Texas with a Texas company, could have accepted 51 weekly workmen's compensation payments, plus $18,681.62 medical payments, without his or his attorney's knowledge that they were being paid in accordance with Texas terms and schedules. We consider his acceptance of these payments as tantamount to a choice or selection of the state in which he wished to recover and receive payments on his claim.

Regardless of the conclusions of this court as to plaintiff's choice or lack of choice of forums, this conclusion is irrelevant to a holding of *res judicata* herein. Plaintiff urges strenuously that the *Magnolia Petroleum Co.* decision or *res judicata* was based upon the element of the employee having had a choice of forums, whereas the plaintiff herein allegedly did not. We opine, however, that the decision of the Texas Industrial Accident Board in *Magnolia Petroleum Co.* became *res judicata*, not because plaintiff employee had a choice of forums, but because he had failed to appear at a hearing on the Board's final award, when duly notified of it. He was deemed to have acquiesced in the propriety of this decision, and it became final by his failure to appear. As a *final judgment*, it could be used to oppose future judgments on the

same subject, between the same parties under the doctrine of *res judicata.*

In Louisiana the doctrine of *res judicata* is set forth in Civil Code article 2286 as follows:

> "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

As is apparent from the above-quoted article ,the use of the doctrine of *res judicata* begins with a "judgment," which is universally understood to be a final judgment. When plaintiff Newall Griffin, after due notification, failed too appear in Texas to protest the action of the Board in discontinuing his payments under Tex. Rev. Civ. Stat., Art. 8307 (6) (a), at which time he could have set forth his arguments concerning his choice of forums, the Board's decision to discontinue payments became final. As a final judgment, it could be interjected in opposition to any other judgments concerning (1) the same demand, (2) deriving from the same cause of action, (3) between the same parties, and (4) formed by them against each other in the same quality. Nowhere is it stated that, for the doctrine of *res judicata* to apply, plaintiff must have had a free choice of forums.

Once the matter of the workmen's compensation payment is adjudged *res judicata,* under the authority of the *Magnolia Petroleum Co.* case quoted extensively above, it must be accorded "full faith and credit" under the U. S. Constitution Art. IV, sec. 1.

We consider that the decision of the Texas Industrial Accident Board became final in regard to plaintiff Newall

Griffin's claim when he received notice of his right to appeal within twenty days from the date of the Board's decision to discontinue his payments on August 18, 1971, and did not do so regardless of the issue of his choice of forums. The instant suit brought in Louisiana contains all the elements for the application of the doctrine of *res judicata* as set forth above. The same parties are involved; the claim for compensation is the same, arising out of the same accident on June 29, 1970, which occurred in Louisiana, and the "quality" of the parties is the same. Griffin's final adjudicaiton on this same workmen's compensation claim in Texas which properly took jurisdiction of the claim must be accorded full faith and credit by the sister state of Louisiana, in reliance upon the holdings of *Magnolia Petroleum Co.o v. Hunt*, cited *supra*. The ruling of the trial judge upholding defendant's exception of *res judicata* and dismissing plaintiff's suit at his costs is correct.

Plaintiff-appellant's second allegation of error; *i.e.*, that the contract documents bind the insurer to make payment according to the law of the state in which the van line is domiciled, and that the van plaintiff was driving at the time of the accident was actually domiciled in Georgia, can be answered very simply by quoting from the Certificate of Insurance issued by Universal Underwriters which states that all of its members and employees are protected in accordance with the workmen's compensation benefits "applicable in each state." This latter quoted segment does not imply any exclusivity of jurisdiction for any state, be it that of the domicile of the van lines, the employer, the employee, or anyone else.

For the reasons set forth above the judgment of the trial court is affirmed at appellant's cost.

AFFIRMED.

APPENDIX C

SUPREME COURT OF LOUISIANA

NO. 53,038

NEWAL W. GRIFFIN

V.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY ON WRIT OF REVIEW TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF ASCENSION STATE OF LOUISIANA

MARCUS, Justice

From a judgment of the First Circuit Court of Appeal,[1] affirming the judgment of the trial court upholding a peremptory exception of res judicata and dismissing plaintiff's suit based on a claim for compensation under the Louisiana Workmen's Compensation Act, the plaintiff applied to this Court, and we granted a writ of review.[2]

The record discloses that plaintiff, Newal W. Griffin, a resident of Houston, Texas, was hired in that city as a truck driver by Keller Industries, Inc. (hereinafter referred to as "Keller"), a corporation organized and domiciled in the State of Texas. Keller, as a member of the Motor Truck Owners Conference, Inc., was covered by a workmen's compensation policy issued by Universal Underwriters Insurance Company (hereinafter sometimes referred to as "Universal"), defendant herein.

Plaintiff was assigned to drive one of the trucks leased by his employer to U. S. Van Lines, Inc. (hereinafter referred to as "Van Lines") of Atlanta, Georgia. On June 29, 1970,

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1. Griffin v. Universal Underwriters Insurance Co., 268 So.2d 702 (La. App. 1972).
2. 271 So.2d 258 (1973).

while so employed, he sustained serious personal injuries resulting from a motor vehicle accident which occurred in Ascension Parish, Louiniana, and was hospitalized in the Baton Rouge General Hospital. Plaintiff notified his employer of the accident who immediately informed the Safety Director of Van Lines who, in turn, informed the defendant. On July 21, 1970, defendant filed a report of the accident and injury with the Texas Industrial Accident Board (hereinafter sometimes referred to as the "Texas Board"). The Texas Board established a file on plaintiff's claim and directed correspondence to him requesting that all future correspondence regarding his claim be made to the Texas Board. There is no proof that plaintiff actually received this notice or that he ever directed any claim for compensation to the Texas Board.

Defendant began to pay plaintiff workmen's compensation at the rate of $49.00 per week, the maximum allowable for permanent disability under both the Texas and Louisiana Workkmen's Compensation laws. Checks covering these payments were mailed to plaintiff by defendant through its agent's local office in Baton Rouge (Crawford & Company). In addition, $18,681.62 in medical expenses were paid by the defendant.

On April 22, 1971, while still receiving compensation payments from defendant, plaintiff settled his tort claim with the third party tortfeasor in the amount of $10,000.00. The settlement was executed at his domicile in Houston, Texas.

Upon learning of this settlement, Universal immediately notified plaintiff of its intention to cease compensation payments and requested the Texas Board to suspend compensation benefits since his election to recover damages against the third party tortfeasor precluded his right to recover com-

pensation under the Texas Workmen's Compensation Act (Vernon's Ann. Civ. St. art. 8307, §6a).

Plaintiff made demand upon defendant for resumption of workmen's compensation benefits which demand was denied, and, on July 27, 1971, plaintiff filed the present suit against Universal for workmen's compensation benefits under the Louisiana statute. On August 18, 1971, the Texas Board rendered a final judgment stating:

> "The Board finds that by reason of the said Release, Indemnity and Guaranty Agreement with the Third Party, said employee has made a final election, and all additional claims for benefits under the Texas Workmen's Compensation Act are denied."

Both plaintiff and his attorney were furnished a copy of this final award and notified of the right to "appeal therefrom within 20 days from the date of this final award." No appeal was taken within the stipulated time, and the award became final. Defendant filed a peremptory exception of res judicata on the ground that plaintiff could not recover in Louisiana on a workmen's compensation claim since Louisiana was required to give full faith and credit to the final award of the Texas Board. The trial court sustained the exception and dismissed plaintiff's suit. The Court of Appeal, in affirming the trial court, concluded that, since the decree of the Texas Board was final, it must be accorded full faith and credit under Article IV, Sec. 1 of the Constitution of the United States, citing Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 64 S.Ct. 208, 88 L.Ed. 149 (1943) as authority.

The sole issue presented for our consideration is what effect did the final award of the Texas Board have on plaintiff's right to claim workmen's compensation benefits under the Louisiana Workmen's Compensation Act.

It is not disputed that both Texas and Louisiana have jurisdiction in regard to the workmen's compensation claim and that the Texas award became final prior to any final award being rendered in Louisiana. Therefore, we would ordinarily be required to give full faith and credit to the Texas award since it was based upon the same demand (workmen's compensation) arising out of the same cause of action (industrial accident on June 29, 1970) between the same parties and formed by them against each other in the same quality (Art. 2286 of the Civil Code). Furthermore, we would also be compelled to agree with the Court of Appeal that the Magnolia decision would be controlling in the instant case, and plaintiff's action would be barred except for the subsequent ruling by the United States Supreme Court in the matter of Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622, 67 S.Ct. 886, 91 L.Ed. 1140 (1947), which decision, together with the Magnolia decision, we will hereinafter discuss.

According to the facts in the Magnolia case, Magnolia Petroleum Company employed Hunt as a laborer in connection with the drilling of oil wells. In the course of his employment, Hunt, a Louisiana resident, who had been employed in Louisiana, was sent to Texas where he was injured. While in the hospital there, he made claim for workmen's compensation under the Texas statute, and payment of benefits was commenced. In connection with his claim for compensation in Texas, he completed and signed certain forms issued by the Texas Industrial Accident Board, which were returned to the Board by him. Upon returning to Louisiana, Hunt decided to claim benefits under the more generous provisions of the Louisiana Workmen's Compensation Act, but, prior to a final decree in Louisiana, the Texas Board rendered a final award. Subsequently, the Louisiana court rendered a judgment in Hunt's favor under the Louisiana Workmen's

Compensation Act, subject to a credit for the Texas award. Upon review, the United States Supreme Court held that Hunt was free to pursue his remedy in either State, but, having chosen to seek it in Texas where the award was res judicata, the full faith and credit clause precluded him from seeking a remedy for the same cause of action in Louisiana. Accordingly, Magnolia's plea of res judicata was upheld, and Louisiana was ordered to give full faith and credit to the final award of the Texas Industrial Accident Board.

Plaintiff argues that the decision in Magnolia does not apply in the present case since plaintiff did not consciously elect to pursue his remedy under the Texas Workmen's Compensation Act. However, as we read the Magnolia case, the fact that plaintiff did or did not elect to pursue his remedy under the Texas Workmen's Compensation Act is of no significance. Rather, the holding of the Supreme Court in Magnolia is predicated on the circumstances where, as here, there is a single cause of action between the same parties brought in two states, both of which had jurisdiction. Therefore, where an award rendered by one state (Texas) has been adjudicated res judicata, the full faith and credit clause deprives the other state (Louisiana) of the power to deny that the Texas award has the same binding effect on the parties in Louisiana as it does in Texas.

Therefore, we find no merit to plaintiff's contention that Magnolia would not be controlling since he did not select the forum. Rather, it is the prior final Texas award on the same cause of action between the same parties that would bar plaintiff's present suit.

However, some four years subsequent to the Magnolia decision, the United States Supreme Court rendered the decision in Industrial Commission of Wisconsin v. McCartin,

supra, which decision was apparently not considered by the Court of Appeal.

The McCartin decision concerns an Illinois employer and employee. The employee drove back and forth between his home in Illinois and his assigned work in Wisconsin. While working in Wisconsin within the course and scope of his employment, the employee suffered an injury. Since the employee was entitled to proceed under the Illinois Workmen's Compensation Act and thereafter claim compensation under the Wisconsin Workmen's Compensation Act, with credit to be given for the amount paid pursuant to the Illinois Act, he elected to proceed initially in Illinois. The employee had included in the settlement agreement a stipulation that the Illinois award would not affect any of his rights under the Wisconsin Workmen's Compensation Act. The stipulation was approved by the Illinois Commissioner and made part of the lump sum settlement award. The Illinois award became final. Subsequently, when the employee applied for workmen's compensation in Wisconsin, both his employer and the insurance carrier resisted the claim contending that, under the full faith and credit clause, the Wisconsin proceedings were barred by the Illinois award; reliance was placed on the Magnolia case which had been just recently decided. On the basis of this decision, the Supreme Court of Wisconsin denied recovery to the plaintiff. On review by the United States Supreme Court, the judgment was reversed. The issue there again was whether the compensation paid under the Illinois statute raised a full faith and credit bar to a subsequent award in Wisconsin for an additional amount.

The Supreme Court did not find the Magnolia case controlling since the Illinois award was different in its nature and effect from the Texas award in the Magnolia case. The Court first quotes the Illinois exclusive coverage clause and shows that it means in Illinois, as it does in practically every

other state, that no other common law or statutory remedy under local law can be sought.

The Court went on to say:

> "But there is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. [Citing cases] And in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, [citing cases], we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction. Especially is this true where the rights affected are those arising under legislation of another state and where the full faith and credit provision of the United States Constitution is brought into play. [Citing cases]
>
> "We need not rest our decision, however, solely upon the absence of any provision or construction of the Illinois Workmen's Compensation Act forbidding an employee from seeking alternative or additional relief under the laws of another state. * * *"

At this point, the Court proceeded to refer to the settlement agreement between the parties which contained the stipulation previously referred to and which had also been approved by the Illinois Industrial Accident Commission. However, the Court went on to say:

> "* * * the reservation spells out what we believe to be implicit in that Act — namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award

> under the laws of another state. And in the setting of this case, the fact is of decisive significance.
>
> "Since this Illinois award is final and conclusive only as to rights arising in Illinois, Wisconsin is free under the full faith and credit clause to grant an award of compensation in accord with its own laws. Magnolia Petroleum Co. v. Hunt, 320 US 430, 88 L ed 149, 64 S Ct. 208, 150 ALR 413, 15 NCCA NS 529, supra, thus does not control this case."

Thus, the Court concludes that the reservation clause was not necessary to its decision in that it only sets forth that which is implicit in the Illinois statute; that is, there is nothing in this statute to indicate it is designed to preclude any recovery for compensaton brought in another state for injury received in the course of Illinois employment.

In the instant case, we must determine whether the Texas Act contains any "unmistakable language" which would foreclose an additional award under the laws of Louisiana. In the first place, the Texas exclusive coverage clause (Vernon's Ann. Civ. St. art. 8306, §3) does not have this effect. As a matter of fact, we do not find it significantly different from that of the Illinois statute. Texas does have an express statutory provision which precludes recovery in Texas when recovery has been first obtained in another state for an out-of-state injury:

> "* * * no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred."
>
> (Vernon's Ann. Civ. St. art. 8306 §19)

However, we find nothing in this statute or in any other provision of the Texas Workmen's Compensation law that

says that, if the employee first obtains a Texas award for compensation, he shall thereafter be precluded from seeking a successive award in another state, nor have any cases been called to our attention which have so held. Therefore, in accordance with Industrial Commission of Wisconsin v. McCartin, we conclude that the Texas award is final and conclusive only to the rights arising in Texas, and Louisiana is free under the full faith and credit clause to grant an award of compensation in accordance with its own laws, after giving credit for the sums paid under the Texas Act.

For the foregoing reasons, judgment of the Court of Appeal sustaining the exception of res judicata is reversed, and the case is remanded to the trial court with instructions to proceed with this matter consistent with the views set forth herein.

APPENDIX D

NEWAL W. GRIFFIN
VERSUS NO. 17,592
UNIVERSAL
UNDERWRITERS
INSURANCE COMPANY
Filed: Dec. 9, 1971

STATE OF LOUISIANA
PARISH OF ASCENSION
23RD JUDICIAL
DISTRICT COURT
s/ Deputy Clerk
Clerk of Court

JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED That the peremptory exception of res judicata filed herein by defendant be and the same is hereby maintained and the plaintiff's suit dismissed at his costs.

JUDGMENT READ, RENDERED AND SIGNED In Open Court at Donaldsonville, Parish of Ascension, Louisiana, this 9th day of December, 1971.

s/ Penrose C. St. Amant
Judge

APPENDIX E

NEWAL W. GRIFFIN	NUMBER: 17,592
VERSUS	DIVISION "C"
UNIVERSAL	23RD JUDICIAL
UNDERWRITERS	DISTRICT COURT
INSURANCE COMPANY	PARISH OF ASCENSION
	STATE OF LOUISIANA

JUDGMENT

This cause came on plaintiff's application for a new trial on January 18, 1972 pursuant to regular assignment. Present were Paul H. Due', counsel for plaintiff and Kenneth E. Barnette, counsel for defendant. The Court considering the entire record of these proceedings, and the argument of counsel and for reasons this day orally assigned;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant and against plaintiff, overruling plaintiff's application at his costs.

JUDGMENT RENDERED this the 18th day of January, 1972.

JUDGMENT READ AND SIGNED this the 21st day of January, 1972 at Donaldsonville, Louisiana.

s/ Penrose C. St. Amant
Judge

APPENDIX F

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 26th day of October, 1973, the following action was taken by the Supreme Court of Louisiana in the cases listed below:

REHEARINGS REFUSED:

53,038 Griffin v. Universal Underwriters